

STORAGE NAME: h0735.sa.doc

DATE: February 19, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 735 (PCB SEC 02-13)

RELATING TO: Public Records/State Property/Security System Plans

SPONSOR(S): Select Committee on Security, Representative(s) Gelber and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) SECURITY, SELECT YEAS 8 NAYS 0
- (2) STATE ADMINISTRATION
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

This bill expands an existing public records and public meetings exemption¹ relating to information regarding security systems for public and private property held by public agencies. It restates that security system plans, or portions of security system plans, for any property owned or leased by the state or for any privately owned or leased property, held by a public agency are confidential and exempt from the public records requirements. The bill expands the list of documents deemed a security system plan. In addition, those portions of a meeting wherein such confidential and exempt information is discussed is closed to the public. This bill provides a public necessity statement, as required by the Florida Constitution.

This bill provides for future review and repeal of the public records exemption.

The bill does not appear to have a fiscal impact on state or local government.

Because the exemption in this bill duplicates a current exemption that is substantially similar, the member is filing a strike-all amendment that exempts building plans, blueprints, schematic drawings, and diagrams, all of which are not otherwise made exempt by law.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

¹ At present, the exemptions are found in section 281.301, F.S.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records and Public Meetings Laws

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

In regard to public meetings, Article I, s. 24(b), Florida Constitution, provides that

[a]ll meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public.

Florida Statutes, in s. 286.011, provide that

[a]ll meetings of any board or commission of any state agency or authority or of any agency or authority or any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records and meetings from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Chapter 281, F.S., Relating to Safety and Security Services

Section 281.301, F.S., provides that information relating to the security systems for any property owned by or leased to the state or any of its political subdivisions, and information relating to the security systems for any privately owned or leased property that is in the possession of any public agency, is confidential and exempt from the requirements of Chapter 119, F.S. Such information includes photographs, surveys, schematic diagrams, recommendations, or consultations or portions thereof relating directly to or revealing such systems.

C. EFFECT OF PROPOSED CHANGES:

This bill amends the language currently found in s. 281.301, F.S., an existing exemption to public records and meetings requirements, and recreates it as s. 119.071, F.S.

The bill clarifies and makes explicit that security system plans or portions of security system plans of a public or private entity, which plans are in the possession of a public agency, are confidential and exempt. Additionally, the bill specifically defines the phrase "security system plan". Much of the definition is contained in the current law, though additions include: threat assessments; threat-response plans; emergency-evacuation plans; sheltering arrangements; or manuals for security personnel, emergency equipment, or security training. In addition, those portions of a meeting wherein such confidential and exempt information is discussed is closed to the public.

This bill provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that the exemptions are necessary because security system plans are a vital component of public safety. Such plans contain components that address safety issues for public and private property on which public business is conducted and address the security of private property on which a large segment of the public relies.

Additionally, this exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2006, unless reviewed and saved from repeal through reenactment by the legislature.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Because the exemption in this bill duplicates a current exemption that is substantially similar, the member is filing a strike-all amendment that exempts building plans, blueprints, schematic drawings, and diagrams, all of which are not otherwise made exempt by law.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON SECURITY, SELECT:

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Thomas Randle/Richard Hixson

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